

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

ALVIN DARRELL SMITH,

Petitioner,

v.

**CIVIL ACTION NO. 3:05CV130
(BROADWATER)**

AL HAYES,

Warden, et al.,

Respondent.

**ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

On December 6, 2005, the Petitioner in the above styled action submitted his Motion for Writ of Mandamus to the Court, initiating the instant action. Among the Petitioner's subsequent filings are a Motion to Have Counts Answered (Document No. 9) and a Motion for Preliminary Injunction (Document No. 10). Magistrate Judge John S. Kaull reviewed the filings and issued a Report and Recommendation on the motions dated May 25, 2006 (Document No. 18). The Petitioner subsequently filed Objections to the Report and Recommendation which were docketed as Document No. 20. In the interests of justice and in accordance with 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review.

In his Objections the Petitioner indicates that he did not intend to seek the consolidation of the instant action with Civil Action No. 2:05CV64. The Petitioner's Motion, (Document No. 9) seems to seek an extension of the filing fee payment deadline and to amend the instant action. The Petitioner has since been granted leave to proceed in forma pauperis and has consented to the scheduled collection of fees in relation to this action (Document No. 16). The Petitioner's

request for an extension of time to pay the case filing fee is therefore moot. The Magistrate Judge further construed Document No. 9 as a motion to consolidate the present action with a civil action previously filed by the Petitioner. Since the initial motion is unclear, the Magistrate Judge's recommendation to dismiss the motion will be adopted. The subsequent filings that restate the Petitioner's intent will be referred to the Magistrate Judge for further evaluation of the Petitioner's intended course of action and an appropriate disposition thereof.

With respect to the Petitioner's Motion for Preliminary Injunction, the Petitioner raises conclusory arguments restating his demand for injunctive relief without providing adequate substantiation of his claims. The Petitioner therefore does not present an adequate showing to merit injunctive relief.

Accordingly, the Magistrate Judge's Report and Recommendation is **ORDERED ADOPTED**. Petitioner's Motion to Have Counts Answered (Document No. 9) is **DENIED**. The Petitioner's subsequently filed Motions (Document Nos. 21, 22, and 24) are referred to the Magistrate Judge for evaluation of the Petitioner's request to modify the instant action. The Petitioner's Motion for Preliminary Injunction is **DENIED** (Document No. 10).

It is so **ORDERED**.

The Clerk is directed to transmit true copies of this Order to all counsel of record herein, the *pro se* Petitioner and Magistrate Judge John S. Kaull.

DATED this 30th day of June 2006.


W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE